BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 37.86.2801, 37.86.2803, 37.86.2901, 37.86.2902, 37.86.2904, 37.86.2905, 37.86.2907, 37.86.2910, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2943, and 37.86.2947, and the repeal of ARM 37.86.2914 pertaining to Medicaid inpatient hospital reimbursement	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On June 26, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-445 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1281 of the 2008 Montana Administrative Register, Issue Number 12.

2. The department has amended ARM 37.86.2803, 37.86.2910, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2943, and 37.86.2947; adopted New Rule I (37.86.2806); and repealed ARM 37.86.2914 as proposed.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL

(1) and (2) remain as proposed.

(3) Medicaid reimbursement shall not be made unless the provider has obtained authorization from the department or its designated review organization prior to providing any of the following services:

(a) inpatient psychiatric services provided in an acute care psychiatric hospital, acute care general hospital, or a distinct part psychiatric unit of an acute care general hospital, as required by ARM 37.88.101;

(b) through (4)(d) remain as proposed.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) "Acute care psychiatric hospital" means a psychiatric facility accredited by the Joint Commission on Accreditation of Health Care Organizations that is devoted to the provision of inpatient psychiatric care for persons under the age of 21 and licensed as a hospital by:

(a) the department; or

(b) an equivalent agency in the state in which the facility is located.

(1) through (33) remain as proposed but are renumbered (2) through (34).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, 53-6-149, MCA

37.86.2902 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) through (5) remain as proposed.

(6) Inpatient hospital providers must comply with the applicable portions of 42 CFR 482.

(7) Acute care psychiatric hospitals must comply with 42 CFR 440.160, 42 CFR 441 subpart D, and the applicable portions of 42 CFR 482.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2904 INPATIENT HOSPITAL SERVICES, BILLING REQUIREMENTS

(1) through (4) remain as proposed.

(5) Except for hospital resident cases, a provider may not submit a claim until the recipient has been either:

(a) remains as proposed.

(b) a patient at least 30 days, in which case the hospital may bill ~~every 31 days~~ on the 31st day and every 30 days thereafter;

(c) through (6) remain as proposed.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, GENERAL REIMBURSEMENT (1) Prospective payment system (PPS) hospitals including in-state PPS facilities, distinct part units, border facilities, all out-of-state facilities, acute care psychiatric hospitals, and Center of Excellence facilities will be reimbursed under the All Patient Refined Diagnosis Related Groups (APR-DRG) prospective payment system described in ARM 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, and 37.86.2920.

(2) through (3)(f) remain as proposed.

(4) PPS facilities may interim bill for stays equal to or exceeding 30 days at the same hospital.

(a) through (6) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) through (b) remain as proposed.

(c) The department computes a Montana average base price per case. Effective October 1, 2008 the average base price, including capital expenses, is ~~$3,960~~ $4,129. Disproportionate share payments are not included in this price.

(i) The average base price for Center of Excellence hospitals, including capital expenses, is ~~$6,545~~ $6,890. Disproportionate share payments are not included in this price.

(ii) The average base for distinct part rehabilitation units and long term care hospitals (LTCH), including capital expenses, is ~~$8,718~~ $9,092. Disproportionate share payments are not included in this price.

(d) through (2) remain as proposed.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. After publication of MAR Notice Number 37-445, the department identified two instances in which it was necessary to insert the term "acute care psychiatric hospital" to make the rules more easily understandable, but which do not constitute a substantive change in intent or meaning. Therefore, the department inserted "acute care psychiatric hospital" into the list of providers of inpatient psychiatric services in ARM 37.86.2801 and the list of prospective payment system hospitals in ARM 37.86.2905. This is intended to avoid misunderstandings about the provider status and reimbursement methodology of acute care psychiatric hospitals. For the same reasons, the department inserted a definition of "acute care psychiatric hospital" into ARM 37.86.2901. The definition is the same as "inpatient psychiatric facility" in ARM 37.88.1102 (repealed).

The department also changed the average base prices in ARM 37.86.2907 to reflect the most current data. The Montana average base price was changed from $4,128 to $4,129. The average base price for Center of Excellence hospitals and distinct part rehabilitation units was changed from $6,545 to $6,890. The average base price for long term care hospitals was changed from $8,718 to $9,092. These changes will have no detrimental effects on Medicaid providers or recipients.

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The proposed APR-DRG system works well for adult Medicaid populations. However, it does not fairly compensate hospitals for Neonatal Intensive Care Unit (NICU) services when the infant is transferred to another hospital before

going home. Low birth weight babies who require intensive care services are often in the hospital for several months, with the most expensive portion of the care required at the beginning of the stay. Because there are only three Level III NICU units in the state, babies and their families are often required to seek treatment away from their home community. This presents financial and emotional hardships for the family. The American Academy of Pediatrics and the American College of Obstetrics in their joint publication, The Guidelines for Perinatal Care, recommend sending the infant back to their home hospital for the convalescence portion of care to allow for the local physician to become familiar with the infant, to allow the family the opportunity to learn to care for the infant's special needs, and to incorporate the infant into the family.

The proposed reimbursement policy for neonatal transfers appears to monetarily penalize the facility that provides the more acute portion of the care for a low birth weight infant and encourages it to keep the patient for the entire stay which could be detrimental to the infant and the infant's family.

We propose a return to cost reimbursement for NICU cases or a modified transfer provision for NICU cases.

RESPONSE: The department appreciates the charts and information presented by the various commentors on this subject and agrees that it is a topic that needs further analyses. The department will work with the provider association and individual hospitals affected by this policy to determine if this reimbursement policy should be changed in a future rule.

COMMENT #2: We are concerned about the accuracy of the data in the payment simulations provided to the individual hospitals and have experienced some issues with the responsiveness of the contractor hired by the department to do the simulations.

RESPONSE: The department and the contractor apologize to the hospitals that experienced a delay in response to their request for accurate simulation data. Out of approximately 14,000 claims, 27 claims involving two hospitals had grouping inaccuracies. Both facilities have been contacted and the issues resolved. The department accepted comments submitted up to one week after the date originally set for the close of comments to allow the affected hospitals time to review the accurate simulation data and submit comments.

COMMENT #3: We are concerned that the outlier policy is overly restrictive. An "outlier" is a hospital case that is atypical of the hospitalizations included in a specific DRG. Additional payments are provided for those cases to address the unusual circumstances. Outlier status is usually a statistical measure of deviation from the normal case, rather than a financial trigger.

From the data supplied by the department it appears that outlier status is rarely achieved for Montana hospital cases and that "hospitals must bear significant

exposure to losses" before outlier payments for cases that fall out of the normal range are applied.

We recommend that the department measure the appropriate outlier status as cases that represent a range of standard deviations from the mean, and compare those cases to the outlier results achieved by a financial benchmark.

RESPONSE: After analysis, the department decided to set the outlier pool (the number of cases which hit outlier) at 5% of total cases. The majority of Montana Medicaid cases are within the normal range covered by the DRG payment. The highest percentage of cases that fall out of the normal range are neonate intensive care cases. The department, therefore, set a lower outlier threshold for neonate intensive care cases acknowledging a hospital's higher level of exposure to financial losses in such cases.

COMMENT #4: We are optimistic about the proposed reimbursement changes. We thank the department for accepting many of our recommendations and for actively involving the hospitals in the rate development process.

RESPONSE: The department thanks the hospitals, medical staff, and associations for their invaluable input to these rules.

6. The department intends for the adoption, amendment, and repeal of rules to be effective October 1, 2008.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State September 2, 2008.